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Supreme Court, U.S.
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No. 03-1411

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE DOE, INDIVIDUALLY AND
AS GUARDIAN AD LITEM; LACEY DOE, A MINOR,

Petitioners,

v.

BETSEY WARREN LEBBOS; LISVET CARRILLO-HERRERA;
COUNTY OF SANTA CLARA; SANTA CLARA COUNTY
DEPARTMENT OF SOCIAL SERVICES; SANTA CLARA COUNTY
CHILD PROTECTIVE SERVICES,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT

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I. ARGUMENT

Pursuant to Supreme Court Rule 15, Respondent Betsey Warren Lebbos submits this opposition brief to address factual inaccuracies in the petition for writ of certiorari and the Ninth Circuit's decision below. These factual inaccuracies bear on whether social worker Lisvet Carrillo-Herrera was entitled to absolute immunity when investigating and pursuing alleged sexual abuse. Ms. Lebbos' involvement in this case was limited to the submission of a declaration to the police regarding George Doe's child neglect and other personal problems. The petition and Ninth Circuit decision are based on the erroneous premise that Ms. Lebbos' declaration contained allegations of sexual abuse. There is no evidence or complaint of any sexual abuse of Lacey Doe, only verified complaints of genital area pain consistent with a catheter-associated urinary tract infection.

Nothing in the declaration submitted by Ms. Lebbos to the police and serving in part as a basis for Ms. Carrillo-Herrera's report and decision to subject Lacey to an invasive sexual abuse examination, contained any mention of sex abuse. To the contrary, the declaration states that, "Jim told me that Lacey was complaining about pain in her genital area. I gave Lacey a bath. She was very red in her vaginal area. I was concerned that she should go to a doctor as soon as possible." *See* Appendix A, ¶ 26. The declaration went on to point out that "Jim told me that Lacy was still complaining about pain in her genital area." *See* Appendix A, ¶ 28. The first six pages were given to the police. The completed eight page declaration that was mailed to Child Protective Services contained the same statements mentioned above regarding Ms. Lebbos' observations of Lacey's health issues and added "[i]t is

uncontroverted that Lacey . . . 4) has an untreated genital infection" (*see* Appendix A, ¶ 40), and "Lacey needs a doctor and to be taken into custody." *See* Appendix A, ¶ 37 (emphasis added). The completed declaration on file is attached as Appendix A.

The numerous reports that were generated by the police and other social services agencies as a result of Ms. Lebbos' declaration created the hysteria of sexual abuse. Nothing in Ms. Lebbos' declaration however, makes any sexual abuse allegations. The social worker could not have reasonably relied on any statements from Ms. Lebbos in reaching the conclusion that sexual abuse occurred.

The Ninth Circuit's decision misstates Ms. Lebbos' declaration and what she actually reported by incorrectly stating that Ms. Lebbos reported that "Lacey complained of vaginal pain and discharge." *See* A-20. There is no evidence in Ms. Lebbos' declaration mentioning vaginal discharge or accusing George Doe of sexual abuse. Social worker Carrillo-Herrera misinterpreted Ms. Lebbos' declaration and never had any basis to conclude sexual abuse occurred or to order a sexual abuse examination.

Judge Kleinfeld's dissent in the Ninth Circuit's decision further misstates Ms. Lebbos' declaration by stating, "Lacey was taken away from her father on the basis of 'lack of food, clothing, shelter, and medical care inadequate,' and an accusation of suspected sexual abuse. These accusations came from Betsey Lebbos." *See* A-39. This is an inaccurate factual statement as Ms. Lebbos never made any sex abuse allegations. Judge Kleinfeld when on to state, "Lacey never did get 'treatment . . . for her vaginal infection,' which the judge had inquired about. Fortunately, she did not have a vaginal infection-this was misinformation from Betsy [sic] Lebbos." *See* A-37. The

initial declaration submitted to the police never claimed that Lacey was being sexually abused or had a vaginal infection.

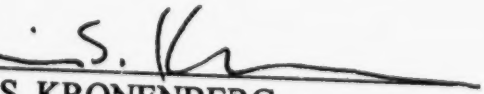
II. CONCLUSION

The clear misstatements of fact upon which this petition is premised and contained in the Ninth Circuit's decision are material and bear on why the Court should grant certiorari. Ms. Lebbos never made any allegations of sexual abuse. The social worker in this case proceeded on fictitious evidence of sexual abuse. The social worker misinterpreted Ms. Lebbos' declaration regarding the general neglect of Lacey Doe and never had any basis to conclude sexual abuse occurred or to order a sexual abuse examination. Based on the foregoing, the Ninth Circuit erred in granting absolute immunity to social worker Carrillo-Herrera. The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Dated: May 12 2004

MURPHY, PEARSON, BRADLEY & FEENEY

By: 

WILLIAM S. KRONENBERG
Attorney for Respondent
Betsey Warren Lebbos

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APPENDIX

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Declaration concerning Need for Protective Custody for Lacey , age four:

I, Betsey Warren Lebbos, do hereby declare the facts concerning what I observed with George and his daughter, Lacey

1. I have known George for sixteen years since 1983. He and I were both lawyers. I had a political crisis. He helped me greatly. We practiced law together in the same office for a year or so. He was married, had no children, and did not, to my knowledge, drink

2. I had not seen George for six years. He got a divorce, lost his money, moved to Modesto and became involved with a drug addict who had his child, Lacey. He became addicted to alcohol. I just spoke to him by phone at this time. I thought he was a caring, capable, and decent person, lawyer, and father. I guess I did not realize that his drinking would naturally affect the way he treated his daughter. George filed for custody of his daughter and he was awarded custody. Since I did not see George and only spoke with him by phone, I was oblivious. I convinced him that he might want to leave the practice of law as he hated it, needed help raising his daughter, had no money, was not making a good living in Modesto, and I encouraged him to go home to Miami to his family where, I thought, they might provide support for him.

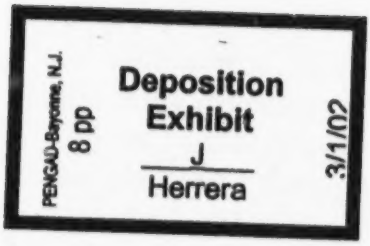
3. Over the last three years I spoke to George about once every two or three months while he was in Miami. I started sending gifts and presents to Lacey as her

"Auntie Betsey." George sent me pictures of her. She seemed fine. But George sometimes called drunk, and I told him that I would not speak to him while he was drunk He told me that his father was cruel, mean, and belittled him. He said that his father had been physically, emotionally, and mentally abusive and brutal to him while he was growing up and still was saying he was worthless, no good, and the like. George could not or would not find employment as a lawyer in Miami. He ended up doing taxes for H and R Block at minimum wage. After three years, George was making no progress in Miami

4. A couple of weeks ago, George called drunk and said he had told his father off His father told him to leave. He said that he wanted to return to California. I told him that he could stay in my home with his daughter until he could get himself on his feet, but that he could not drink in my home nor be in my home having had any alcohol. He readily agreed to these terms. George left it open as to when he was returning to California.

5. George arrived in California at 2:30 p.m. Wed., Oct. 27, 1999, called me, and asked me to pick him up at the airport. I was shocked. He had given me no notice that he would be arriving. I told him that I was not free until after 5 p.m. He said that it was 5:30 p.m. He did not realize that he was on a different time frame even though he lived in California for many years.

6. When he arrived at my home he seemed fine. George took his daughter, Lacey, out for a long walk. That evening we went out shopping for Halloween. Lacey had no discipline.



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If she did not get what she wanted, she threw a tantrum and George would give in (After all, I was paying for everything). George kept saying to Lacey very critical, judgmental, and very inappropriate comments like, "I told you not to do that. You need to walk faster, Lacey. How many times have I told you not to do that thing around me." I did not understand any of these comments. Lacey was not doing anything that a normal four year old does not do, such as pick up toys and look at them. It was a very berating, critical, battering kind of constant flow of badmouthing of his daughter. I said to him, "George, cool it. She is just a little girl. She is just doing what little girls do." George ignored me and kept berating his daughter. It gave me a headache I began to wonder whether there was something very wrong with George.

7. That night I got us fast food for dinner on the way home from Halloween shopping. Lacey. did not eat her hamburger or any food, and I asked George about it. He said that she ate very little. I was concerned, but shirked it off as a little-girl's excitement at a new home.

8. That night George did not bathe his daughter nor change her clothes but let her fall asleep in the same clothes she had worn all day. This disturbed me.

9. On Thursday morning, October 28, 1999, I fixed Life cereal with a mixed fruit combination, (cantaloupe balls, peaches, pears, grapes, orange pieces) with milk and sugar with orange Juice for breakfast for George and Lacey. While George act breakfast, Lacey ate only two bites of cereal. Now I was alarmed. She had not had any dinner at all and now she was not eating any breakfast. I mentioned this to George, and he repeated

that, "She does not eat much." I chided him and told him that he had to provide her with a well-balanced daily menu with fruits and vegetables and that he had to encourage her to eat three full meals a day. He said, "She does not eat fruits or vegetables." That meant that George was never providing Lacey with a balanced diet of any kind. She had no fruit and no vegetables in her diet. With no consumption of milk either, her bones would be brittle, break easily and not grow properly. With no fruits and vegetables, she had no resistance to illness nor fuel to grow on. I was dismayed.

10. I helped George take out Lacey's clothes to put away. Sad. Lacey had only one pair of pajamas. They were summer pajamas and not appropriate for Fall or winter. Lacey had no sweaters for the cold. Lacey had only three pairs of short shorts and no long pants for fall or winter. She had only three pairs of socks. This child was not cared for. George could have purchased a few things for his daughter that she had to have. I had sent him an extra $500.00 for work he did for me. To make your daughter sleep in the same pair of pajamas every night is neglect.

11. I gave George a check for $100.00 for him to buy food for him and Lacey. I had put a refrigerator in his bedroom for him and her for special things they needed. I told George that I would buy Lacey some clothes.

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12. George took out the stroller and took Lacey out. He was gone all day. I was surprised. When he returned about 5: 00 p.m. Thursday, he said that he had walked to my bank (five miles) to cash my check, had not bought any food, and they had not eaten. I did not think that his explanation for being gone for six hours made any sense.

13. I told George that I had to go to my watercolor painting class that night, but that he could use any of my food to fix Lacey and him dinner. I asked if he wanted to go over to the Community Center to see about classes for Lacey, and he said fine. I drove them over to the Community Center. Once again, George was harping at this daughter in a non-stop harangue against her. By this time I realized that George did not possess any parenting skills. He was making his daughter a nervous wreck with his constant badgering, verbal abuse, unreasonable demands, and constant criticism.

14. Once at the center, Lacey watched the kids in the karate class, and she really was so happy and into it. She wanted to be part of it. She was so bright, so striving for happiness, so capable of joy and learning. She ran over to the children outside to play and talk with them. Lacey speaks only Spanish, but everyone understands her as she is so expressive and sweet with a soft little child's voice. George yelled to her to stop bothering them and made her stop playing with the children and stay next to him. This is not a competent parent. I got George to let me take her outside to the play gym for a while. Lacey went over to the children, up and down the slides, laughing and talking to all of the children, twisted on the gym and had a ball. By herself, this little

girl is a joy. She is no trouble of any kind, except that one needs to make sure that "no" to her means "no."

15. As it started to get dark, George came out and started yelling at Lacey that she knew better than this, that she had to stop misbehaving, she had to follow his orders, and that they had to go home. . What was all of this about? Lacey had not been misbehaving. She had done nothing wrong. She was being called names and being criticized for absolutely nothing at all. My heart sank. This child's mental health was seriously in jeopardy with this crazy talking father.

16. I drove them home, hoping that George would then fix Lacey dinner, give her a bath, read her a story from the books that I had, and put her to sleep.

17. When I returned at 9:45 p.m., my worst fears were realized. I have a five bedroom home. I have two housemates. One was James Boyden. He was carving a pumpkin for Halloween. George was talking to him in the kitchen area. George was drunk. Lacey was beside the kitchen in the family room which is open space between the two rooms alone with her clothes on and the beautiful princess outfit I had purchased for her for Halloween on top of her clothes watching t.v. George was oblivious.

18. George was so drunk that he could have killed his daughter and not been aware of it. He could not have helped her in any way had there been any danger to her life. He posed a

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danger to her life. He was an unfit father and now there was no doubt about it.

19. I put Lacey to bed after changing her clothes and her father fell on his side of the bed drunk in his clothes.

20. I wrote George a note that night that he was a drunken bum, that I would not permit it in my home, and that he had to go to an AA meeting the first thing in the morning. In the morning George pooh-poohed it by saying, "I should not have accepted that drink Jim offered me." Later Jim said then when he got home at about 7:00 p.m., he thought that George had already been drinking. What I understand is that the moment I let him off at my house to feed Lacey, to bathe her, to put her pajamas on, to read her story, to get her safely to sleep, he immediately grabbed a bottle of alcohol he had purchased with the $100.00 he had walked five miles to get from my check, left Lacey alone, and proceeded to get himself drunk.

21. Lacey had no dinner the night before, except Jim says George gave her a hot dog. That means for Thursday, October 28, 1999 Lacey ate two bites of cereal and a hot dog. She had nothing else to eat all day. George did not insist on her eating anything for breakfast, gave her nothing for lunch, and then gave her just a hot dog for dinner.

22. By Friday morning, I realized I had a serious situation on my hands about the care for Lacey. She had now gone two days without a bath or change of clothes. Her father would not feed her, except token junk. Lacey was constantly subject to George's verbal abuse which was a stream of hurt, harm, and belittlement.

23. I decided I needed to get Lacey into a pre-school where she would be fed properly, treated properly, have her peer age group, and stability and where her father could not harm or harange her. I called around and found that Kiddie Korral associated with my housemate's Lutheran Church had openings for pre-kindergarten. I made arrangements for George to meet with the Director, and I told him that I would pay for the school and he could pay me back later.

24. Friday morning I gave George the keys to my car to go to whatever AA meeting he could find and told him not to return until he had done so. He left Lacey with me. He did not return for six hours. He was crying and said that he was glad I had made him go to the meeting. I then asked for Lacey's doctor in Miami as we needed to prove that Lacey had had her shots before she could be enrolled in school. He gave me the name of a doctor and then he went to see the Director of the school. When I called the doctor, they said they were not Lacey's doctor. They were anesthesiologists. They had no records.

25. Friday morning I tried to get Lacey to eat some cereal or toast. All she would do is drink the orange juice I gave her. At lunch time I fixed tuna fish salad sandwiches for Lacey. She had one bite and spit it out, so then I went down into the food bin and asked her to

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select what she wanted. She chose lemon flavored prunes and she ate and enjoyed two of them. I then asked her if she wanted "sopa"-soup, and she said no, and I could not get her to agree to eat anything more. I was really worried. George returned, and I was going to suggest that he give Lacey a bath as she had not had a bath in two days. He fixed a turkey sandwich for Lacey for dinner. I asked where were the greens she needed to eat, to wit, lettuce, peas, beans, were and he said to me, "She does not eat green food." Lacey had not had a chance to finish the turkey sandwich when someone knocked on the front door. George said it was a client for whom he had to do work. It was 5:00 p.m. on a Friday night. He said that he had to go with the client and do the work This was an excuse, a pretext. It was a pretext, an excuse for him to go out drinking. He grabbed Lacey to take her with him. I begged him to let her stay with me. She had not eaten even two halves of the turkey sandwich. She had had no milk. This child was starving g in front of my eyes and George was going to drag her around to bars and when she could not speak a word of English and had no one to protect her. I prevailed and Lacey stayed with me.

26. I made Lacey finish her one turkey sandwich and drink some milk. Jim told me that Lacey was complaining about pain in her genital area. I gave Lacey a bath. She was very red in her vaginal area. I was concerned that she should go to a doctor as soon as possible. I changed her clothes and read her parts of Alice in Wonderland teaching her the English words. She is so bright that as soon as you say the words, she knows them in English and repeats them. I walked her up to the Swim and Racquet Club to meet some children and she had a ball.

On the way home she saw some older girls playing ball in the street, so we stopped to watch. She walked up to them and held her arms out for them to throw the ball to her. They fell in love with her as she would come up to them and start speaking in her soft little voice very expressively in Spanish wanting them to talk with her when they could not understand what she was saying. But children's communication prevailed, and they understood each other. She is so sociable, so sweet, with such a tiny little sweet voice that everyone will love her if we can get her into a stable and safe home life and a school environment. She is so starved for love that she walks up to strangers to talk with them so that they will give her love. All her father gives her is neglect and verbal abuse. When I got home and finally could get an excited Lacey into bed, I just sat down and sobbed. This little girl has so much to give, and we have to protect her.

27. George came home at about 9:00 p.m. and he was sober I was really ticked off though when a half hour later Lacey came Out to me in the kitchen with something in her hands. It had taken a lot of trouble to get her into bed and asleep on a sane schedule, now she was up at 9:30 p.m. out of bed and walking around the house. I gave her a disapproving look and said, "You go back to bed, Lacey. You should not be up." She started to cry

and said in Spanish, "Papa told me to bring this to you." It was some kind of present. What kind of reasoning does this crazy father have to wake up his asleep daughter who needs her sleep so that he can be gratified by having her give me a present late at night? Then I had to contradict myself and hug and kiss her.

28. Saturday I told George that I had to tutor. He said that he would take Lacey with him to his client, Armando (last name unknown) and bring her home later. Jim told me that Lacy was still complaining about pain in her genital area. George refused to provide me with a client name, an address, or any schedule for him or Lacey. In the afternoon, after I finished tutoring I went and bought Lacey a lot of new clothes- seven outfits, two sweaters, two new pairs of fleece pajamas.

29. At about 9:00 p.m. when George and Lacey returned, George was indifferent to the new clothes for Lacey. Thankfully he was sober. He kept talking about his career, his need to get a job right away. I told him to cool it as I would advance the money for Lacey to be cared for and for him to take his time. George never has expressed any interest of any kind in the welfare, the health, the education, the caring of his daughter. She is just a thing to him to possess and drag around with him to other people's homes so that other people can take care of his daughter for him temporarily. He does not care. While he said he was going to take Lacey to church early in the morning with Charlie, one of my housemates who is very religious, he had no clothes laid out for Lacey to wear, so I ironed clothes for Lacey to wear and laid out her outfit with a sweater.

30. George went to church Sunday with a housemate, Charles, who is very religious. When he returned he said that he had to go do some work for Armando. He took Lacey with him in a sweatshirt and long pants outfit that I had purchased for Lacey. He was walking as he has no car. I reminded him to make sure that he brought Lacey back by 5:00 p.m., because a neighbor

had agreed to help to take Lacey and him around for Halloween while I gave out candy for the kids at my house. I had purchased Lacey a beautiful $15.00 princess dress with headband, buffont arm decorations, a long flowing skirt and matching top with sequins with a matching purse and she loved it. He said that he would be sure and be back by 5:00 p.m.

31. 10:00 a.m. Sunday morning, October 31, 1999 was the last that I saw of Lacey.

32. Wherever George was dragging Lacey around to all night, Lacey did not have her princess dress, she did not have a Halloween, she did not have a holiday.

33. I called what I thought was Child Protective Services on Monday, November 1, 1999, twenty four hours after I has last seen Lacey and George. I now realize that I got a Child Abuse Hotline when I want Child Protective Services. George is a lawyer. He can fast talk a lot of people out of doing the right thing for Lacey by intimidating them. We need a sophisticated person who understands that child abuse and neglect comes from all kinds of parents from all kinds of professions.

34. George called at noon on Monday, November 1, 1999, and claimed he was "working on a brief." He would not tell me where Lacey was so that I could Call CPS. I told him that he could not stay in my home and that we needed to have Lacey placed in a protective

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situation until he could get on his feet. He refused.

35. George showed up at 6:30 p.m. on Monday night and I did not open the door. He wanted his things. I told him that we needed to have Lacey evaluated for her protection. He refused and said he was her father and would take care of her. I told him that he could not take care of Lacey at that time, and we needed to make other arrangements for her without a lot of trouble. He refused.

36. Since I started this summary, George showed up at my home with a police officer in the back where the sliding glass door is. The police officer started to walk into my home, and I told him that he did have my permission to come into my home. The lawyer I spoke with last night, James Sikes, told me that the police could not enter my home without a court order and for me to tell them that if they showed up. Needless to say, the police entered my home without my permission and then three police officers were there. They are Badge number 1488 for Sgt. Mike Bowman, Badge number 1869 for Officer Joe Giorjianni, Badge number 1615 for Sgt. Schuman. I told each of them that they were not to enter my home. Each of them threatened to have me taken to a psych facility as a nut if I did not let them into my home, which they were already in. They went throughout my entire house without my permission and every time I told them to leave my house, they threatened to have me taken away. I called a lawyer. The police threatened to break down the door to the bedroom George had been staying in if I did not let George have his things. My neighbor was there and witnessed the police misconduct.

37. My lawyer, Charles Kavalaris, made a deal for Sgt. Schuman to go to where George claimed Lacey was and see if she was o.k. I knew the cops were never going to do a damn thing. Lacey needs a doctor and to be taken into custody.

38. Sgt. Schuman claims he has an address where George and Lacey are. You may call him to get it. The police want to blame me, the complainant, because they know I am going to complain about their breaking and entering my home. I warned them if something happens to Lacey that they would be responsible. It appears they will definitely be liable in civil damages for any harm that befalls Lacey from her father's conduct toward her. I provided a copy of this complaint in draft form through item 31 to Sgt. Schuman.

39. George admitted to the police that he is an alcoholic.

40. It is uncontroverted that Lacey 1) is not given food by her father, 2) is not properly clothed, 3) is verbally abused by her father, 4) has an untreated genital infection, 5) is not given proper bathing by her father, 6) has no medical records to document any care that she has been given, 6) has no mother as her mother is dead having been killed in a car accident, 7) has no relatives in the area to help her, 8) has no schedule and no school, 9) has presently no home, 9) her father has no job, 10) her father has no money and no car, and this is a child who is in urgent need of care by the County.

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41. Based on the conduct herein, I am memorializing the complaint so that when nothing is done and Lacey is killed or injured by her father, George , a suit may be filed against the City of San Jose for its failure to act to protect this four year old child.

I declare under penalties of perjury that the above is true and correct, based on my personal knowledge, information and belief and this declaration is executed this 2nd day of November, 1999 at San Jose, CA.

November 2, 1999 /s/

BETSEY WARREN LEBBOS
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